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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,315	07/13/2005	Christian Quellet	102790-195 (30059 US)	2667

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EXAMINER	
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ART UNIT	PAPER NUMBER
1767	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/542,315	QUELLET ET AL.	
	Examiner	Art Unit	
	PETER F. GODENSCHWAGER	1767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 June 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,7-13 and 17-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,7-13 and 17-22* is/are rejected.

7)☒ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 3, 2010 has been entered.

Claim Objections

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 18-23 been renumbered 17-22.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7-13, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by McManus et al. (Intl. Pub. No. WO 01/78657).

Regarding Claim 1: McManus et al. teaches a fragrance composition comprising a fragrance (Pg. 19, Ln 29), a liquid crystal forming material (Pg. 1, Lns. 9-10) containing a fatty alcohol having 22 carbon atoms (behenyl alcohol), and a thickening agent (reinforcing material) (Pg. 12, Lns. 19-25, Pg. 15, Lns. 5-10). McManus et al. further teaches that the active ingredients (i.e. fragrance/perfume component) may form part of the ultimately formed liquid crystal/gel network (LCGN) and may be added to the composition before the LCGN is formed (Pg. 4, Lns. 25-27 and Pg. 20, Lns. 24-27). As such, a fragrance material that is part of a LCGN network and added/mixed with the LCGN material before forming the LCGN would necessarily be encapsulated by the LCGN (fully surrounded by the LCGN). McManus et al. further teaches the reinforcing (thickening) agent is calcium alginate (an alginate). While McManus et al. does not teach the alginate is admixed with amphiphilic modified starches or dextrins having a 1% solution viscosity lower than 50 mPas, such modified starches or dextrins are recited as optional.

The Office recognizes that all the claimed physical properties are not positively recited, namely that the reinforcing (thickening) material causes the encapsulated fragrance composition to exhibit a plateau region of the store elastic modulus higher than 10^3 Pascal at 25 °C. However, McManus et al. teaches all the claimed ingredients, in the claimed amounts, process steps, and process conditions, therefore, the claimed physical properties would inherently be achieved by the composition as claimed. Furthermore, Pg. 3, Ln. 23 to Pg. 7, Ln. 10 of Applicant's original specification discloses that it is the specific reinforcing material claimed

(and disclosed by McManus et al.) that is responsible for the claimed store elastic modulus. If it is the Applicant's position that this would not be the case: (1) evidence would need to be presented to support Applicant's position; and (2) it would be the Office's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients, in the claimed amounts, process steps, and process conditions.

Regarding Claims 7 and 17: McManus et al. further teaches the liquid crystal-forming material comprising, in addition to a fatty alcohol having 22 carbon atoms (behenyl alcohol), a non-ionic co-emulsifier (surfactant) such as ethoxylated fatty esters (ethoxylated fatty alcohols) of 10 to 22 carbon atoms (Pg. 10, Lns 10-13 and Pg. 12, Lns. 29-30).

Regarding Claim 8: McManus et al. further teaches that the composition is a emulsion (dispersion) where the liquid crystal material is in the form of particles (vesicles) (Pg. 3, Ln. 32-Pg. 4, Ln.4).

Regarding Claim 9: The Office recognizes that all the claimed physical properties are not positively recited, namely that the encapsulated fragrance composition to exhibit a plateau region of the store elastic modulus higher than 10^3 Pascal at 25 °C. However, McManus et al. teaches all the claimed ingredients, in the claimed amounts, process steps, and process conditions, therefore, the claimed physical properties would inherently be achieved by the composition as claimed and disclosed. Furthermore, Pg. 3, Ln. 23 to Pg. 7, Ln. 10 of Applicant's original specification discloses that it is the specific reinforcing material claimed (and disclosed by McManus et al.) that is responsible for the claimed store elastic modulus. If it is the Applicant's position that this would not be the case: (1) evidence would need to be presented to support

Applicant's position; and (2) it would be the Office's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients, in the claimed amounts, process steps, and process conditions.

Regarding Claim 10: The Office recognizes that all the claimed physical properties are not positively recited, namely that the composition has a liquid crystalline phase with a periodicity length of between 30 and 120 Angstroms. However, McManus et al. teaches all the claimed ingredients, in the claimed amounts, process steps, and process conditions, therefore, the claimed physical properties would inherently be achieved by the composition as claimed and disclosed. Furthermore, there is nothing in Applicant's original specification to indicate that such a property is not simply the result of forming a liquid crystal network of comprising the claimed ingredients. If it is the Applicant's position that this would not be the case: (1) evidence would need to be presented to support Applicant's position; and (2) it would be the Office's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients, process steps, and process conditions.

Regarding Claim 11: The Office recognizes that all the claimed physical properties are not positively recited, namely that the composition has at least one melting transition at a temperature higher than 50 °C. However, McManus et al. teaches all the claimed ingredients, in the claimed amounts, process steps, and process conditions, therefore, the claimed physical properties would inherently be achieved by the composition as claimed and disclosed. Furthermore, there is nothing in Applicant's original specification to indicate that such a property is not simply the result of forming a liquid crystal network of comprising the claimed

ingredients. If it is the Applicant's position that this would not be the case: (1) evidence would need to be presented to support Applicant's position; and (2) it would be the Office's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients, process steps, and process conditions.

Regarding Claims 12 and 13: McManus et al. further teaches the composition as a skin moisturizing composition, (Pg. 1, Lns. 5-12) a personal care product commonly found in the house (household product).

Claims 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by McManus et al. (Intl. Pub. No. WO 01/78657).

Regarding Claims 19 and 20: McManus et al. teaches a fragrance composition comprising a fragrance (Pg. 19, Ln 29), a liquid crystal forming material (Pg. 1, Lns. 9-10) containing a fatty alcohol having 22 carbon atoms (behenyl alcohol), and a thickening agent (reinforcing material) (Pg. 12, Lns. 19-25, Pg. 15, Lns. 5-10). McManus et al. further teaches that the active ingredients (i.e. fragrance/perfume component) may form part of the ultimately formed liquid crystal/gel network (LCGN) and may be added to the composition before the LCGN is formed (Pg. 4, Lns. 25-27 and Pg. 20, Lns. 24-27). As such, a fragrance material that is part of a LCGN network and added/mixed with the LCGN material before forming the LCGN would necessarily be encapsulated by the LCGN (fully surrounded by the LCGN). McManus et al. further teaches the reinforcing (thickening) agent is calcium alginate (an alginate). While McManus et al. does not teach the alginate is admixed with amphiphilic modified starches or

dextrins having a 1% solution viscosity lower than 50 mPas, such modified starches or dextrins are recited as optional.

The Office recognizes that all the claimed physical properties are not positively recited, namely that the reinforcing (thickening) material causes the encapsulated fragrance composition to exhibit a plateau region of the store elastic modulus higher than 10^3 Pascal at 25 °C. However, McManus et al. teaches all the claimed ingredients, in the claimed amounts, process steps, and process conditions, therefore, the claimed physical properties would inherently be achieved by the composition as claimed. Furthermore, Pg. 3, Ln. 23 to Pg. 7, Ln. 10 of Applicant's original specification discloses that it is the specific reinforcing material claimed (and disclosed by McManus et al.) that is responsible for the claimed store elastic modulus. If it is the Applicant's position that this would not be the case: (1) evidence would need to be presented to support Applicant's position; and (2) it would be the Office's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients, in the claimed amounts, process steps, and process conditions.

As McManus et al. does not require any components that are recited by the instant specification as materially affecting the basic and novel characteristics of the claimed invention, the composition of McManus et al. is deemed to satisfy the limitation "consisting essentially of" (see MPEP 2111.03).

Regarding Claim 21: McManus et al. further teaches the liquid crystal-forming material comprising, in addition to a fatty alcohol having 22 carbon atoms (behenyl alcohol), a non-ionic

co-emulsifier (surfactant) such as ethoxylated fatty esters (ethoxylated fatty alcohols) of 10 to 22 carbon atoms (Pg. 10, Lns 10-13 and Pg. 12, Lns. 29-30).

Regarding Claim 22: McManus et al. further teaches that the composition is a emulsion (dispersion) where the liquid crystal material is in the form of particles (vesicles) (Pg. 3, Ln. 32-Pg. 4, Ln.4).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over McManus et al. (Intl. Pub. No. WO 01/78657) in view of Scholz et al. (Intl. Pub. No. WO 97/00667, cited on IDS dated July 13, 2005).

McManus et al. teaches the composition of claim 1 as set forth above. McManus et al. further teaches the composition may comprise emollient compounds such as polyethylene (Pg. 13, Lns. 1-25).

McManus et al. does not teach the polyethylene as specifically partially crystalline or crystalline having a MW less than 10,000 g/mol. However, Scholz et al. teaches a moisturizing lotion comprising a fragrance and a polyethylene with a MW below 3,000 and a melting point (indicating cyrstallinity or at least partial cyrstallinity) below 130 °C (abstract; Pg. 28, Lns. 1-10; Pg. 33, Lns. 20-31; Pg. 38, Lns. 25-31). McManus et al. and Scholz et al. are analogous art because they are concerned with the same field of endeavor, namely moisturizing lotions comprising fragrances. At the time of the invention, a person of ordinary skill in the art would have found it obvious to use the polyethylene of Scholz et al. as the emollient in the composition of McManus et al. and would have been motivated to do so because McManus et al. suggests that polyethylene in general is a suitable emollient, and Scholz et al. teaches that the polyethylene also serve to improve the thickening/stability of the compositions (Pg. 32, Ln. 10 to Pg. 33, Ln. 30).

The Office recognizes that all the claimed physical properties are not positively recited, namely that the encapsulated fragrance composition to exhibit a plateau region of the store elastic modulus higher than 10^3 Pascal at 25 °C. However, McManus et al. in view of Scholz et al. render obvious all the claimed ingredients, in the claimed amounts, process steps, and process conditions, therefore, the claimed physical properties would inherently be achieved by the composition as claimed and rendered obvious. Furthermore, Pg. 3, Ln. 23 to Pg. 7, Ln. 10 of Applicant's original specification discloses that it is the specific reinforcing material claimed

(and disclosed by Scholz et al.) that is responsible for the claimed store elastic modulus. If it is the Applicant's position that this would not be the case: (1) evidence would need to be presented to support Applicant's position; and (2) it would be the Office's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients, in the claimed amounts, process steps, and process conditions.

Response to Arguments

Applicant's arguments filed June 3, 2010 have been fully considered but they are not persuasive.

Applicant argues that the "system" of essential constituents of McManus et al. differs from the claimed invention. However, as set forth above, McManus et al. teaches a fragrance composition comprising a fragrance (Pg. 19, Ln 29), a liquid crystal forming material (Pg. 1, Lns. 9-10) containing a fatty alcohol having 22 carbon atoms (behenyl alcohol), and a thickening agent (reinforcing material) (Pg. 12, Lns. 19-25, Pg. 15, Lns. 5-10). McManus et al. further teaches that the active ingredients (i.e. fragrance/perfume component) may form part of the ultimately formed liquid crystal/gel network (LCGN) and may be added to the composition before the LCGN is formed (Pg. 4, Lns. 25-27 and Pg. 20, Lns. 24-27). As such, a fragrance material that is part of a LCGN network and added/mixed with the LCGN material before forming the LCGN would necessarily be encapsulated by the LCGN (fully surrounded by the LCGN). McManus et al. further teaches the reinforcing (thickening) agent is calcium alginate

(an alginate). This teaching of McManus et al. addresses and anticipates each and ever recited element of at least instant claim 1.

Applicant argues that one of ordinary skill in the art would not find any reason alter the disclosure of McManus et al. Pgs. 2-3. However, a reference must be considered for all that it discloses and must not be limited to preferred embodiments (see MPEP 2123). The reading of McManus et al. cannot be limited to Pgs. 2-3. A proper reading of the prior art reference will encompass the entire document. It is also noted that a reference disclosing optional inclusion of a particular component teaches compositions that both do and do not contain that component (MPEP 2123) and therefore the reference anticipates the inclusion of such a component.

Applicant argues that they have distinguished between "personal care products" and "household products" as different classes of compositions. However, while it is acknowledged that these two categories of products have been identified, they have not been defined by the original specification such that one of ordinary skill in the art would understand where the line of demarcation would be made between the two categories, so that products may only be considered one or the other. As set forth in the rejection above, a product that is commonly found in the house would be reasonably interpreted by one of ordinary skill in the art to be a household product. While a household product may not necessarily be a personal care product, that does not negate the former conclusion.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER F. GODENSCHWAGER whose telephone number is (571)270-3302. The examiner can normally be reached on Monday-Friday 7:30-4:30 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on (571) 272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PETER F GODENSCHWAGER/
Examiner, Art Unit 1767